IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 29160 of 2006(U)

PETITIONER:

PREMARAJAN M., S/O. LATE KOMU NAIR,
AGED 48 YEARS, MATTATHIL HOUSE, P.O.PAYAMBRA,
VIA. KUNNAMANGALAM, KOZHIKODE DISTRICT.
(RETD. SUB MAJOR, INDIAN ARMY.)

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

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1. THE UNION OF INDIA, REPRESENTED BY
THE SECRETARY, MINISTRY OF DEFENCE,
UNION OF INDIA, NEW DELHI.

2. THE CHIEF OF THE ARMY STAFF,
ARMY HEADQUARTERS, DHQ P.O., NEW DELHI-110 011.

3. THE GOC-IN-C,
SOUTHERN COMMAND, PUNE.

4. THE COMMANDANT,
A.S.C. CENTRE (SOUTH), BANGALORE-560 077.

5. THE OFFICER-IN-CHARGE, RECORDS,
A.S.C. CENTRE (SOUTH), BANGALORE-560 007.

BY ADV. SRI.M.A.FAYAZ, ACGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 29160 OF 2006

Dated this the 27th February, 2007.

JUDGMENT

The petitioner retired from service on 31.1.2006 while holding the post of Subedar Major. According to him a Junior Commissioned Officer of the rank of Subedar and Subedar Major can be granted honorary ranks of Lieutenants and Captains on active list on two occasions i.e on Republic day and Independence day falling in the last year of their service by His Excellency the President of India on the basis of the recommendation of higher authorities based on merit and after due assessment following the procedure laid down in the Army Regulations as also by the Army Headquarters. The petitioner feels aggrieved because he was not considered for the grant of honorary ranks of Lieutenants and Captains. He sought for a direction in this writ petition to the respondents to grant him the honorary rank of Lieutenants and Captains from 26th January 2006 with all the benefits including pay and allowances and other terminal benefits.

2. I do not find any provision of law which confers any vested right in the petitioner to say that the respondents have got a duty to confer such honorary ranks on any Subeddar or Subedar Major in the last year

immediately preceding his retirement. The conferment of such honorary ranks is absolutely discretionary and based on assessment made by the concerned authorities. The petitioner does not appear to have approached the authorities if he has got a genuine grievance for the redressal of such grievance. It is trite that a writ of mandamus will issue only when a right is vested in the person who demands and a duty is cast on the respondents to consider such demand. Neither is present here. It is also trite that only when a demand is made and that demand is either not considered or rejected the party concerned need invoke the jurisdiction under Art.226 of the Constitution of India. That element also is lacking here.

3. I dispose of this writ petition observing that if the petitioner files a representation before the appropriate authority viz., the second respondent, the same shall be considered and decision taken by that authority in accordance with law, as early as possible.

K.K.DENESAN
Judge

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